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IN THE

Supreme Court of the United States.

OCTOBER TERM 1954

No. .

UNITED STATES EX REL. AUDREY JOAN CZAPKOWSKI,

Petitioner,

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

AUDREY JOAN CZAPKOWSKI prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on March 24, 1955.

CITATIONS TO OPINIONS BELOW.

The Opinion of the District Court printed in appellant's Appendix below (p. 2a) and submitted herewith is unreported. The Opinion of the Court of Appeals printed in the Appendix hereto, infra pp. 9-10, is reported in 220 F. 2d 436.

JURISDICTION.

The judgment of the Court of Appeals was entered on March 24, 1955 (Appendix, *infra* p. 11). The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254(1).

QUESTIONS PRESENTED.

1. Where an Act of Congress attaches the sanction of deportation to an alien's failure to report his current address once every year, "unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not wilful," must not the Attorney General provide a rational basis for determining under what circumstances an alien may be relieved from the legal consequences of his violation of the law?

2. Where, under a statutory grant of discretion, the Attorney General sets up a class of cases as to which he refuses to exercise any discretion, and that class is not rationally differentiated from other cases not within the class, and where he refuses to exercise his discretion case by case, is not such blanket policy an arbitrary abuse of authority?

3. Where the language of a statute does not clearly define the standard for determining deportable conduct, is not an order of deportation based on that statute a deprivation of due process of law?

STATUTE INVOLVED.

The statutory provisions involved are Section 241(a)(5), Section 265 and Section 266 of the Immigration and Nationality Act of June 27, 1952, P. L. 414, 82d Congress, Ch. 477, Second Session, 66 Stat. 163, 204, 225, 8 U. S. C. A., Section 1251(a)(5), Section 1305 and Section 1306.

STATEMENT.

An application for writ of habeas corpus to test the validity of a deportation order was filed in the United States District Court for the Eastern District of Pensylvania on January 6, 1954. On October 15, 1954, the District Court denied the application and ordered the petitioner remanded to the custody of the respondent.

The jurisdiction of the District Court was invoked because the case arises under the Immigration and Nationality Act of 1952; and the petitioner was detained and imprisoned by the District Director for the Fourth Immigration District, Philadelphia, Pennsylvania, under a warrant of deportation ordering that she be deported to Australia at the expense of the United States, because of her violation of the provisions of the Immigration and Nationality Act of 1952, in that she failed to furnish notification of her address or other information to the Attorney General in the month of January, 1953, and has not established that such failure was reasonably excusable or was not wilful.

The petitioner is a twenty-five year old female, native and citizen of Australia, whose only entry into the United States occurred at Honolulu, T. H., on January 5, 1951, when she was admitted for permanent residence. From May 1952 to June 1952 she was forced to commit diverse acts of prostitution by known abductors, under threats of bodily harm; and was imprisoned by them and held incommunicado.

On the first opportunity to escape, she reported her predicament to the Federal Bureau of Investigation, who took her to the Immigration and Naturalization Service. On June 27, 1952, a warrant of arrest in deportation was issued by the District Director at Buffalo, New York, and she was taken into custody and detained at Our Lady of Charity Refuge in the same city.

While in detention she was given a hearing under the Warrant of Arrest and an Order was entered by the Hear-

ing Officer recommending her deportation from the United States on the ground that she was found practicing prostitution subsequent to entry. On July 26, 1952 she filed an appeal with the Board of Immigration Appeals at Washington, D. C.; and, on August 5, 1952 she was placed under conditional parole, but retained in detention.

On August 23, 1952, while her appeal was under consideration, she left her place of detention because, as she testified, she feared deportation or apprehension by her abductors. On September 3, 1952, the Board of Immigration Appeals ordered the proceedings terminated and the Warrant of Arrest cancelled. She was never served with notice of this Order of the Board because her whereabouts was unknown; and, on September 8, 1952, the Assistant Commissioner of Immigration filed a motion with the Board of Immigration Appeals to reconsider and withdraw its Order of September 3rd. The motion was granted ex parte and a copy served on the petitioner upon her apprehension on April 13, 1953 by an officer of the Service at Philadelphia, Pennsylvania. Two reopened hearings were held in Philadelphia on April 24th and April 30th, 1953, and two additional charges were then lodged against the petitioner. One of the lodged charges adverted to the alleged moral obliquity under the terms of the 1952 Immigration and Nationality Act. The other was "that she is in the United States in violation of Section 241(a)(5) of the Immigration and Nationality Act in that she has failed to furnish notification of her address and other information in compliance with the provisions of Section 265, and has not established that such failure was reasonably excusable or was not wilful."

During the course of the reopened hearings the petitioner testified that she knew she was required by law to report her address to the Attorney General during January of 1953, but gave as the reason for failing to do so her fear of re-apprehension by the immigration authorities and deportation for acts of prostitution committed under duress,

and fear of possible bodily harm by her abductors if they knew her whereabouts.

On May 25, 1953, the Special Inquiry Officer who presided at the reopened hearings filed an Opinion Ordering the petitioner's deportation on both lodged charges; and an appeal was filed with the Board of Immigration Appeals on May 29, 1953. By Order dated October 27, 1953, the Board dismissed the petitioner's appeal but found her deportable solely on the charge that she had failed to furnish notification of her address. On October 30, 1953, the Attorney General issued a warrant directing her deportation from the United States.

The Court below affirmed the Orders of the District Court on the ground that the Attorney General did not abuse his discretion in determining that the petitioner had not established that her failure to furnish notification of her address "was reasonably excusable or was not wilful." The Court below also held that the language of the statute involved clearly defined the standard of conduct upon which to base an order of deportation upon the authority of *United States v. Spector*, 343 U. S. 169 (1952); *United States v. Ragen*, 314 U. S. 513 (1942); *United States v. Shreveport Grain & Elevator Co.*, 287 U. S. 77 (1932); *Union Bridge Co. v. United States*, 204 U. S. 364 (1907). See also *Jordan v. De George*, 341 U. S. 223, 231-32 (1951).

REASONS FOR GRANTING THE WRIT.

The Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court.

Clearly, the questions presented are of importance in the administration of the immigration laws, since the statute provides a ground for deportation appearing for the first time in immigration legislation, and Congress did not see fit to define the meaning of the language under which the Attorney General has been granted the authority to stay deportation.

The decision of the Court below is believed to be erroneous, since it fails to decide whether the Attorney General's discretion is limited or absolute; and fails to take into consideration the punitive impact of the statute which calls for strict construction of its terms. *Mangoang v. Boyd*, 9 Cir., 205 F. 2d 553, cert. denied 74 S. Ct. 129; *Application of Barnes*, 116 F. Supp. 464, 468.

The Attorney General has established as a matter of administrative policy that fear of apprehension by the immigration authorities does not come within the exception noted in Section 241(a)(5) and Section 265 of the 1952 Act (*Matter of M*, 0300/4309741, Board of Immigration Appeals Interim Decision No. 438, 5/6/53). But he has permitted aliens to petition for or complete their proceedings for naturalization if failure to report their address was occasioned only through ignorance of the law. Obviously, this is as arbitrary, capricious and lacking in rationality as to deny remedial relief from deportation to an alien because of race, color or religious belief.

Courts have no power to review administrative discretion when it is reasonably exercised. *U. S. ex rel. Weddeke v. Watkins*, 2 Cir., 116 F. 2d 369, 373, cert. denied 333 U. S. 876, 68 S. Ct. 904, 92 L. Ed. 1152. But in appropriate circumstances, they can compel correction of an abuse of discretion or can compel an official to exercise his discretion where he has obviously failed or refused to do so. *Mastrapasqua v. Shaugnessy*, 2 Cir., 180 F. 2d 999, 1002. Furthermore, Courts may not interfere with administrative determinations unless upon the record the proceedings were manifestly unfair or substantial evidence to support the finding is lacking or the evidence reflects manifest abuse of discretion. *U. S. ex rel. Adamantides v. Neelly*, 7 Cir., 191 F. 2d 997, 1000.

The presumption is that the instant provision of law is Constitutional. Hence, the Attorney General is duty bound to exercise his discretion within the bounds of reason and fairness. If, however, it be deemed that the Attorney Gen-

eral is not limited in the exercise of his discretion and he is free to ascribe what meaning he will to the words "reasonably excusable or not wilful," then that phrase is so vague and meaningless as to lack a sufficient Constitutional standard to justify this deportation proceeding.

A resident alien is entitled to due process of law. *Wong Yang Sung v. McGrath,* 339 U. S. 33, 70 S. Ct. 445, 94 L. Ed. 616. Deportation is equivalent to banishment or exile. *Fong Haw Tan v. Phelan,* 333 U. S. 6, 68 S. Ct. 374, 92 L. Ed. 433.

Obviously, the Courts are without power to substitute their discretion for that of the Attorney General, in whom the power is vested by statute. But, to carry out the Congressional intent the statute must be given a reasonable construction. *Attorney General of the U. S. v. Ricketts,* 165 F. 2d 193; *Repetto v. Acheson,* 94 F. Supp. 623, 625; *Gualco v. Acheson,* 106 F. Supp. 760, 767; *Perri v. Dulles,* 206 F. 2d 586, 591.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FILINDO B. MASINO,
Counsel for Petitioner.

Dated: May 27, 1955.

APPENDIX.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,469.

UNITED STATES EX REL. AUDREY JOAN CZAPKOWSKI,

Appellant,

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued March 10, 1955.

Before McLAUGHLIN, STALEY and HASTIE, *Circuit Judges.*

Opinion of the Court.

(Filed March 24, 1955.)

PER CURIAM.

In this habeas corpus proceeding to test the validity of a deportation order, it is clear that the Attorney General did not abuse his discretion in determining under 8 U. S. C. 1251(a)(5) (Section 241(a)(5) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 204) that the appellant had not established that her failure to furnish notification of her address "was reasonably excusable or was not willful."

Nor do we find any merit in the contentions that the above statute lacks sufficiently definite standards to justify deportation and that it is so vague as to be unconstitutional. The tests of reasonableness and willfulness when applied in a statute to a specific act, as they are here, have been held repeatedly by the Supreme Court to be constitutionally valid standards. United States v. Spector, 343 U.S. 169 (1952); United States v. Ragen, 314 U.S. 513 (1942); United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932); Union Bridge Co. v. United States, 204 U.S. 364 (1907). See also Jordan v. De George, 341 U.S. 223, 231-32 (1951).

The order of the district court of October 15, 1954 will be affirmed.

Judgment.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of October 15, 1954 of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF,
Clerk.

March 24, 1955.